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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

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BOSTON WATERFRONT RESIDENTS'
ASSOCIATION, INC., ET ALI,

Plaintiffs

VS.

GEORGE ROMNEY, ET ALI.,

Defendants

CIVIL ACTION NO.

No. 72-1157-LC

* * * * *

STIPULATION AND AGREEMENT

WHEREAS, the plaintiffs have made certain claims in their Complaint, Amended Complaint and Second Amended Complaint, and WHEREAS, said plaintiffs and the defendants hereto, without in any way admitting the validity of any of said claims, are desirous of settling and compromising said claims by making and carrying out in good faith the provisions hereof;

NOW THEREFORE, all of the parties to the above entitled action hereby enter into this STIPULATION AND AGREEMENT with respect to the disposition of this action, solely for the purpose of this action, and for no other purpose.

1. Simultaneous with the filing with the Court of this STIPULATION AND AGREEMENT, signed by the attorney for all of the parties, the parties will withdraw any appeals then pending with respect to the action, and the parties shall

execute and file the attached form of order dismissing the action with prejudice upon the Court's approval of this Stipulation and Agreement.

2. Upon the approval of this Stipulation and Agreement by the Court, this Stipulation and Agreement shall have the force and effect of an Order of the Court.

3(a) The filing of this Stipulation and Agreement with the Court will end with prejudice the above captioned action and all claims set forth in the Complaint and the First and Second Amended Complaint.

3(b) The term "plaintiffs" as used in this Stipulation and Agreement shall mean both the corporate plaintiff, Boston Waterfront Residents' Association, Inc. ("BWRA") and all of the individual plaintiffs. Each plaintiff hereby agrees that whenever the plaintiffs are required or allowed to choose, designate, select or take any other action hereunder, such action shall mean only one choice, designation, or selection for all plaintiffs, which shall be taken or made by the, then President of BWRA.

4. The Defendant Boston Redevelopment Authority (hereinafter "BRA") shall, within thirty (30) days of the date that this Stipulation and Agreement is approved in writing by the Court, establish a Committee (hereinafter except in paragraph 13, the "Committee") which shall consist of the following:

Eight members shall be persons specifically designated in writing by the plaintiffs as members (among whom may or may not be some of the plaintiffs themselves). Eight members shall be chosen by the BRA from residents of the North End or representatives of North End organizations. The remaining members shall be comprised of one representative designated

by each of the following organizations and individuals, if they elect to designate a representative after invitation to do so by the BRA: The Sierra Club, the local branch of the League of Women Voters, Harbor Towers Trust, United North End Committee for the Development of the Waterfront, North End Union, North End Businessmen's Association, the New England Aquarium, State Office of Environmental Affairs, the Ausonia Council Knights of Columbus, the Boston Conservation Commission, the Society for the Preservation of New England Antiquities, and the non-voting liaison member from the BRA Reviewing Group.

5. The BRA, through its design and planning staff and such other members of its staff as the Director of the BRA will designate, shall conduct a review of certain portions of the Plan as are hereinafter set forth. The members of the BRA staff conducting said review shall be referred to herein as the "BRA Reviewing Group." The BRA shall designate at least one member of the BRA Reviewing Group to act as liaison with the Committee.

6. The Committee shall review those aspects of the Plan as hereinafter designated, and recommend to the BRA Reviewing Group such changes or modifications in the Plan which it deems advisable for the BRA's consideration. Committee recommendations shall be by majority vote, although a minority report may also be submitted. To a reasonable extent the services and certain resources of the BRA shall be available to the Committee to assist it in its duties. Previous studies, reports, and the like prepared by and for the BRA and relating to the aspects

of the Plan under study shall, upon request, be made available to the Committee to assist them in their deliberations.

7. The Committee shall file its report with the BRA Reviewing Group within forty-five (45) days of its organizational meeting, which meeting shall be convened immediately after all members are named and recognized by the BRA.

8. The BRA Reviewing Group shall consider the proposals embodied in the majority and any minority report of the Committee delivered by the Committee to the BRA Reviewing Group. The BRA Reviewing Group shall, within ninety (90) days of its receipt of the Committee's reports, recommend to the Director of the BRA ("Director") such changes and alterations in any aspects or items of the Plan to which the study relates as may be suggested in the Committee's majority or minority report (or any modifications to either made by the BRA Reviewing Group) which, after consideration thereof, the BRA Reviewing Group recommends or concurs in. The BRA Reviewing Group shall simultaneously report in writing its reasons for rejecting any recommendations of the majority and minority reports. The Director shall consider the recommendations of the BRA Reviewing Group and shall also consider the majority and minority reports of the Committee, and thereafter the Director shall elect whether or not to recommend to change or alter any portions of the Plan to which the study relates. The Director shall recommend in writing all changes or modifications to the BRA that he determines require formal adoption by the BRA, and if approved by the BRA, any such changes as may be required

by HUD Regulations will be submitted for review and approval to the U. S. Department of Housing and Urban Renewal, and to such other authorities for review and/or approval as may be required by law.

9. While the Committee and the BRA Reviewing Group shall maintain their separate identities and functions, they are encouraged to work with one another during all phases of the work so as to encourage to the fullest extent possible a systematic, interdisciplinary approach to the planning and decision making with respect to the portions of the Plan under study. The BRA Reviewing Group or a representative thereof shall meet at least bi-weekly with the Committee in order to report on progress in performing the work and review required by this Agreement. At such meetings, the BRA Reviewing Group or a representative thereof shall receive from the Committee any recommendations on such further changes or modifications deemed advisable to be submitted by the Committee at that time.

10. The BRA Reviewing Group's written recommendations to the Director shall be made available simultaneously to the Committee and the Director. The Director shall make his written comments on the BRA Reviewing Group's recommendations and the majority and any minority reports of the Committee, if they differ, available to the Committee no later than 30 days from his receipt of the BRA Reviewing Group's recommendations. The Director shall submit to the BRA within 60 days from his submission of written comments to the Committee any changes which the Director recommends and which require BRA Board approval.

11. The Committee's study of certain aspects of the Plan, and its majority and any minority reports shall consider only

the following items: (Reference of parcel designations is to R-77 Map 2 of Exhibit B, dated 4/8/65). The definition of "design controls" referred to in this paragraph shall mean those controls set forth in the headings of "Table of Land Use and Building Requirements" on page 19 of the Plan.

(The headings so enumerated in said Table are: Site designation, permitted uses, maximum building height, maximum floor area ratio, minimum parking spaces, vehicular access, and arcades or ground floor setbacks.)

- a) What kind of development should be done in the C-2 Parcel, acknowledging the need to provide low income housing for the elderly in said parcel, including questions as to whether or not any buildings should be demolished (and, if so, which ones); whether there should be any new construction, and if so what new construction and where; what design controls (if any) should be imposed; what kind of financing should be sought and the feasibility of different types of construction depending on the financing reasonably available; what kind of development should be preferred; the schedule of work; what kind of parking facilities should be provided.
- b) Design Controls with respect to the development of Parcel A-8, as well as recreational and marina use of adjacent waters, not however including the waters adjacent to Commercial Wharf or Parcel A-7.
- c) Design Controls with respect to the development of Parcel D-1.

- d) Height and massing only with respect to the development of Parcel A-7.
- e) Design Controls with respect to the development of Parcel D-2.
- f) Design Controls with respect to the development of Parcel D-10.
- g) Design Controls with respect to the development of Parcel A-6.
- h) The rehabilitation and development of or demolition of the existing Quincy Market Cold Storage and Warehouse Building, and, if demolition be recommended, the proposed use of the land area so created, as well as the recreational and marina use of adjacent waters.
- i) Phase II of Relocated Atlantic Avenue (being that portion of Relocated Atlantic Avenue from State Street north to Commercial Street), it being acknowledged by all parties that New Atlantic Avenue occupies a position of special importance in the Waterfront Project which requires comprehensive planning to minimize harm to the human environment including the study of prudent and feasible alternatives to meet transportation needs in the waterfront area.

The BRA recognizes a need for open space and recreational land, and that an emphasis will be given to the provision of additional open space and recreational uses, as may be indicated by the study set forth herein. The BRA also recognizes the special concern of the

plaintiffs for the eventual facade treatment of Parcels A-6, A-7, D-2 and D-10. The plaintiffs, in turn, recognize that any eventual judgment on facade treatment is a determination made at a later date when building plans are being finalized and is one that rests solely with the BRA. Taking both considerations into account, the BRA agrees that the plaintiffs may submit their suggestions as to the eventual facade treatment for Parcels A-6, A-7, D-2 and D-10, and the Director agrees to forward these suggestions to the Urban Design Department of the BRA for its consideration at the appropriate time in the design review process.

With respect to each of the aforesaid items, adequate consideration should be given to: the financial feasibility of electing possible alternatives (accepting that the BRA will use its best effort in obtaining funds necessary to carry out any changes approved by the BRA); to the common desire of avoiding any unnecessary delays in executing the Project; the impact of currently planned improvements and/or any proposed changes or alterations in aspects of the Plan to which the study relates on the human environment and quality of life in the area; and to any legal obligations, or reasonably claimed legal obligations of the BRA that may currently exist with respect to contracts, the Plan or HUD regulations. The BRA's good faith determinations after reasonably complying with the procedures herein set forth shall be final and binding on all the parties.

12. The Committee and the BRA Reviewing Group shall give first priority in their deliberations to the aforesaid

aspects of Parcel C-2 with special emphasis on providing adequate low income housing for the elderly, the nature of which prompts more urgency than the above procedures may allow. The parties agree to expedite their recommendations concerning this parcel to the end that development there may begin at the earliest possible time. Second priority shall be given to the aforesaid aspects of the design of Atlantic Avenue to the same end. Third priority shall be given to the aforesaid aspects of Parcels A-6 and A-7, the parties acknowledging that the BRA is currently engaged in such studies and all parties are desirous of concluding these studies at the earliest possible time.

13. With respect to the selection of developers for the remaining buildings to be conveyed for rehabilitation in the C-2 Parcel, the BRA shall expand its present Developer Selection Advisory Committee (formerly Tenant Selection Committee) to twelve persons. The expanded Committee will be comprised of three persons from the Waterfront Project Area selected by the Boston Waterfront Residents' Association ("BWRA"), three persons from the North End Community selected by the BRA; three impartial committee members who are currently on the Tenant Selection Committee (Mr. Havey, Fr. Louis Savio, Fr. Frederick Bailey); and three impartial members to be appointed by the Court. If any replacements are required, they shall be selected by the party (BWRA, BRA, or the Court) which selected said original Committee member who is being replaced, in a similar manner as each of the original Committee

members were selected. Persons who have submitted bids for buildings, or who have been previously designated by the BRA to receive buildings, shall be ineligible for election or appointment. After the first meeting of the full twelve member Developer Selection Advisory Committee, said Committee may function even if vacancies occur and are not replaced, six members being a quorum. The Developer Selection Advisory Committee shall function by majority vote and establish such procedures as it elects. It shall be the function of the Developer Selection Advisory Committee to review the applications of prospective owner-developers of residential buildings within the so-called "C-2 Parcel" and to submit to the BRA a list of acceptable bidders equal to at least twice the number of buildings to be awarded. The Developer Selection Advisory Committee must submit its list to the BRA within 45 days of the BRA's submission to the said Committee of the total list of prospective owner-developers submitting proposals.

In the advisory selection process, the Committee shall assess all proposals using the following guidelines:

1. Proposals which are submitted by community residents who intend to be owner-occupants.
2. Proposals submitted by prospective developers who were or are adversely affected by action undertaken in conjunction with the Waterfront Plan.
3. Proposals which are submitted by prospective developers who are able to provide economic rentals consistent with community objectives.
4. Proposals submitted by prospective developers who are able to carry out the proposed rehabilitation with a financing

program other than Section 312, if Section 312 financing is not available.

5. Proposals submitted by prospective developers who propose joint development approaches which demonstrably meet a greater number of community needs.

The before-mentioned guidelines are not intended to be exclusive, but may be expanded upon by the Advisory Committee during the selection process.

In the event said list of accepted developers submitted to the BRA by said Committee for any reason does not contain at least twice the number of developers to be chosen, then the BRA need only select one-half the number of developers contained on said list from among the list and may select the remaining number of the developers from bidders not included on said list or bidders included on said list as it selects. The BRA shall give consideration to suggestions by said Committee as to the assignment of specific buildings to developers for reasons enumerated by the Committee. The BRA shall also take into account in the final assignment of buildings the proximity of developer's community ties and interest to the buildings to be rehabilitated. No person who meets the guidelines shall be arbitrarily disqualified or excluded by the Committee in the presentation of its list. This provision shall not limit the Committee in its use of sound discretion and judgment in determining if and to what extent applicants meet the guidelines. An aggrieved applicant may appeal to the BRA Board.

The BRA shall have final authority to select or reject developers in accordance with this Paragraph numbered 13.

In the event that the Authority does not award the total number

of buildings to developers recommended by this Committee,
provided that the list submitted includes at least twice the
number of suggested developers as there are buildings, then the
BRA shall request that the Committee submit, within 10 days,
a new list of suggested developers which must include at least twice
the number of developers as there are buildings remaining to be
awarded. This procedure shall apply and continue until the
selection process is completed or the list of eligible developers
is exhausted. The Authority's good faith determination in
selecting developers after due consideration of the recommenda-
tions of the Committee shall be final and binding on all the
parties.

14. Until the completion of the individual items to be studied described herein, there shall be no demolition or new construction commenced by the BRA with respect to the said items to be studied, nor binding agreements which would substantially reduce the BRA's ability to make changes in accordance with the recommendations, if adopted, of the Committee or the BRA Reviewing Group, except that the rehabilitation activities currently underway on Merchantile Wharf, the Commercial Block Building and the twelve buildings already awarded on Fulton Street within Parcel C-2 shall proceed without interruption; provided however, that if the time requirements herein for accomplishing certain acts are not complied with by the plaintiffs, the BWRA, or the Committee, and after said time has expired said action has not been taken, then the BRA may proceed with redevelopment thereafter without the necessity of compliance with the procedures herein, unless the BRA has agreed in writing to extend said time pursuant to paragraph

15 herein. Developer Selection for individual buildings in Parcel C-2 shall be accomplished in accordance with the time requirements of paragraph 13, provided, however, that if the Developer Selection Advisory Committee fails to comply with said time limits, then after said time has expired, the BRA may proceed with and select developers for said buildings without the necessity of compliance with the procedures in paragraph 13.

15. Any and all time limitations contained herein may be enlarged or shortened, or the procedures set forth herein may be modified or amended, upon the unanimous written agreement of the President of the Boston Waterfront Residents' Association, Inc., the Boston Redevelopment Authority Board and upon the written consent of 50% or more of the remaining parties defendant hereto. (For the purpose of the number of "parties defendant", defendants Thuma and Casazza shall be considered as one party, and the defendants Romney, Barry and Richardson shall be considered as one party).

MEMORANDUM

JANUARY 11, 1973

TO: BOSTON REDEVELOPMENT AUTHORITY

FROM: ROBERT T. KENNEY, DIRECTOR

SUBJECT: STIPULATION AND AGREEMENT REGARDING CIVIL ACTION BY
BOSTON WATERFRONT RESIDENTS ASSOCIATION, INC., ET AL VS.
BOSTON REDEVELOPMENT AUTHORITY, ET AL

On April 4, 1972, a suit was filed in U. S. District Court, District of Massachusetts, by the Boston Waterfront Residents Association, Inc. et als. against the Boston Redevelopment Authority, et als alleging the Boston Redevelopment Authority's non-compliance with certain federal statutes and regulations regarding the Downtown Waterfront-Faneuil Hall Urban Renewal Project, Mass. R-77.

Since the initial Complaint was filed the pleadings have been completed and the matter is basically ready to go to trial. For the last six weeks, at the insistence of the Trial Judge assigned to this case, the parties have gone through a negotiatory period which has resulted in a general agreement as to the settlement of this case. The negotiations have been conducted through Special Counsel, the firm of Gadsby and Hannah, and it is now possible to enter into a Stipulation and Agreement which settles this matter.

On December 21, 1972, the Board discussed a Stipulation and Agreement and voted the draft form of such an Agreement in substantially the form as the one attached to that Memorandum. Because of certain recommendations and revisions that were suggested by both the Board and subsequently the plaintiffs, it was necessary to revise the document which has resulted in the final draft which is attached hereto. Since this Agreement is different in some respects from the previous Agreement that was submitted for Board consideration, it is necessary to rescind the previous Vote and to adopt a Vote authorizing special counsel on behalf of the Director and Redevelopment Authority to execute the revised and attached Agreement. An appropriate Vote is attached.

Attachments

